

S E R V E D

December 8, 2015

FEDERAL MARITIME COMMISSION

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DOCKET NO. 15-03

**JOHN T. BARBOUR t/d/b/a BARBOUR AUTO GROUP; BARBOUR AUTO SALES;
BARBOUR SHIPPING; and BARBOUR SHIPPING AND TRANSPORTATION INC. –
POSSIBLE VIOLATIONS OF SECTION 8 AND 19 OF THE SHIPPING ACT OF 1984**

NOTICE OF DEFAULT AND ORDER TO SHOW CAUSE

On May 27, 2015, the Commission commenced this proceeding by issuing an Order of Investigation and Hearing alleging that respondent John T. Barbour t/d/b/a Barbour Auto Group, Barbour Auto Sales, Barbour Shipping, and Barbour Shipping and Transportation Inc. (Barbour) operated as a non-vessel-operating common carrier (NVOCC) without a license issued by the Commission, without filing evidence of financial responsibility, and without keeping open for public inspection a tariff containing rates, charges, rules, and practices in violation of sections 8 and 19 of the Shipping Act of 1984 (Shipping Act). 46 U.S.C. §§ 40501, 40901, and 40902. *John T. Barbour t/d/b/a Barbour Auto Group, Barbour Auto Sales, Barbour Shipping, and Barbour Shipping and Transportation Inc. – Possible Violations of Section 8 and 19 of the Shipping Act of 1984*, FMC No. 15-03 (FMC May 27, 2015) (Order of Investigation and Hearing). The Commission named the Bureau of Enforcement (BOE) as a party to the proceeding. *Id.* at 6.

Commission records indicate that on May 27, 2015, the Secretary sent the Order of Investigation and Hearing to Barbour by UPS. The Commission published the Order in the Federal Register on June 2, 2015. 80 Fed. Reg. 31376 (June 2, 2015.) The Order required Barbour to file an answer to the Order “within 25 day from date of publication of this Order in the Federal Register.” *Barbour – Possible Violations*, FMC No. 15-03, Order at 6 (FMC May 27, 2015) (Order of Investigation and Hearing). No answer has been filed to date.

On June 12, 2015, pursuant to section 41307 of the Act, 46 U.S.C. § 41307, the Commission commenced a related proceeding in a United States district court to enjoin Barbour from operating as an NVOCC. On July 27, 2015, with Barbour’s consent, the court entered an order enjoining Barbour “from acting or operating as [an NVOCC] unless [Barbour] meets the qualifications for and obtains a valid Commission license to operate as [an NVOCC]; furnishes a bond, proof of

insurance or other surety in the amount of \$75,000; and publishes a tariff of its rates, charges, classifications, rules and practices.” *Federal Maritime Commission v. John T. Barbour t/d/b/a Barbour Auto Group, Barbour Auto Sales, Barbour Shipping, and Barbour Shipping and Transportation Inc.*, No. 15-CV-12326-DLC (D. Mass. July 27, 2015) (Order filed).

On June 9, 2015, this Office served the Notice of Assignment to the undersigned as presiding officer and an Initial Order. The Initial Order requires the parties to submit a joint status report with a proposed schedule regarding discovery within twenty days of the service of the answer. *Barbour – Possible Violations* (ALJ June 9, 2015) (Initial Order). On July 23, 2015, BOE filed a unilateral status report. BOE states that on June 17, 2015, it served discovery on Barbour with responses required within thirty days, and that UPS records verify that the discovery was delivered on June 18, 2015. BOE states that Barbour has not responded to the discovery. BOE states that a notice of default and order to show cause should be issued and that if Barbour fails to respond adequately, an initial decision on default be entered against Barbour. (BOE Status Report.)

On October 30, 2015, BOE filed a motion for decision on default with attachments. The certificate of services indicates that the motion was served on Barbour by first class mail on October 30, 2015. As of this date, Barbour has not responded to the motion.

Pursuant to Commission Rules:

Failure of a respondent to file an answer to an Order of Investigation and Hearing within the time provided will be deemed to constitute a waiver of the respondent’s right to appear and contest the allegations in the Order of Investigation and Hearing and to authorize the presiding officer to enter a decision on default as provided for in 46 CFR 502.65. Well pleaded factual allegations in the Order of Investigation and Hearing not answered or addressed will be deemed to be admitted.

46 C.F.R. § 502.63(c)(4). A party that fails to respond to discovery can be ordered to respond.
46 C.F.R. § 502.210(a).

Barbour appears to be in default. There may be some valid reason why he has failed to answer or otherwise respond to the Order of Investigation and Hearing, file a joint status report with BOE, respond to discovery, or respond to the motion for decision on default. Therefore, Barbour will be granted additional time to respond to the proceeding and to show cause why an initial decision on default should not be entered against it. If Barbour fails to respond to this Order by January 8, 2016, a default decision may be entered against him, including assessment of a civil penalty and entry of a cease and desist order.

For the reasons stated above, it is hereby

ORDERED that on or before January 8, 2016, respondent John T. Barbour t/d/b/a Barbour Auto Group; Barbour Auto Sales; Barbour Shipping; and Barbour Shipping and Transportation Inc.:

(1) file an answer to the Order of Investigation and Hearing; (2) serve responses to the discovery served on him by the Bureau of Enforcement; (3) file a response to the motion for decision on default; and (4) show cause why a decision on default should not be entered against him. If Barbour fails to respond, a decision on default may be entered against him, including assessment of a civil penalty and entry of a cease and desist order. It is

FURTHER ORDERED that on or before January 8, 2016, the Bureau of Enforcement serve and file copies of the UPS verifications of delivery of the Order of Investigation and discovery served by BOE.



Clay G. Guthridge
Administrative Law Judge